

FILED

2002 SEP -9 AM 11:20

CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
W.R. Grace & Co., et al.,
Debtor(s). Bankruptcy #01-01139 (JKF)

Wilmington, DE
August 26, 2002
10:00 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor:

David Bernick, Esq.
Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601

Janet S. Baer, Esq.
Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601

David W. Carickhoff, Jr., Esq.
Pachulski, Stang, Ziehl,
Young & Jones
919 North Market Street
Wilmington, DE 19801

Paula A. Galbraith, Esq.
Pachulski, Stang, Ziehl,
Young & Jones
919 North Market Street
Wilmington, DE 19801

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191



1 up --

2 MR. BERNICK: Sure.

3 THE COURT: -- with this issue first, Mr. Bernick?
4 All right. I'm going to get from Mr. Baena a copy of the
5 Order that I entered. And then compare it to the other two
6 Orders, I guess, that have been presented. And I will modify
7 it to add the ability of the Property Damage to file their
8 motions if they choose. I don't think I need to do anything
9 with respect to the Claimants if it's an evidentiary
10 principle. Is that everything, Mr. Westbrook?

11 MR. WESTBROOK: From memory, Your Honor, the only
12 other differences following the hearing when we submitted our
13 Order, we've framed the issue as it says in the context of a
14 property damage case, whether ZAI presents an unreasonable
15 risk, we tried to track the language from the transcript. And
16 the Court will see that when it compares our Order with
17 Grace's Order.

18 MR. BERNICK: That is a sore subject, because we've
19 been over that like nine times, and argued that very issue
20 very specifically, and then negotiated it out.

21 THE COURT: Well, hopefully I did it myself within
22 the context of the hearing. If I didn't, then I'll take a
23 look at that. I was trying very hard not to set the parameter
24 for what the issues would be until the discovery is done. I
25 think the appropriate place to look at that is at the pre-

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 trial conference.

2 MR. BERNICK: We can live with that.

3 THE COURT: Okay. Because I think after discovery we
4 may be able to frame the issue a little bit better than we can
5 now anyway. Okay. All right, fee applications.

6 MR. BERNICK: Fee applications. I've not done this
7 with the Court before, and I don't know what your preferred
8 procedure is. There are quite a number of them. And --

9 THE COURT: Well, with respect to -- first of all, my
10 preferred procedure is to get from somebody -- I don't know if
11 this is gonna be Mr. Smith or you, Mr. Bernick, but one Order
12 that will address all the fees in an Omnibus Order so that I
13 can get them addressed by period. So you or Mr. Smith can
14 work out how that will be proffered. But I would like to get
15 one Order after I get through the allowance process. For
16 today's purposes I have not had any objections to Mr. Smith's
17 report with respect to #10 -- these are agenda items -- #10,
18 #12 through 18, #20 through 31, I believe. I think I need
19 hearings on 11 -- I'm sorry, I thought -- 16 I believe I did
20 get a response in. I'm sorry. I have a different issue with
21 16. I literally cannot read it. The print is too small. And
22 I literally cannot read Mr. Smith's final report because he
23 incorporates some responses that he got from whomever's
24 application that is. And the way they're put into the report,
25 the print is too small. I can't read it. As a result, I have

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191